

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

RAHEEM SMALLS,

Plaintiff,

-against-

ORDER
CV-09-5347(SJF)(WDW)

PETSMART, INC.,

Defendant.

X

FEUERSTEIN, J.

On December 7, 2009, plaintiff Raheem Smalls (“plaintiff”) commenced this action against defendant Petsmart, Inc., alleging, *inter alia*, discriminatory termination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et. seq.*; “wrongful termination,” and breach of contract. On March 30, 2010, defendant’s motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was referred to Magistrate Judge William D. Wall pursuant to 28 U.S.C. § 636(b). By Report and Recommendation dated November 1, 2010 (“the Report”), Magistrate Judge Wall recommended that plaintiff’s “wrongful termination” and breach of contract claims be dismissed, but that the branch of defendant’s motion seeking dismissal of plaintiff’s discriminatory termination claim be denied. No objections have been filed to the Report. For the reasons stated herein, the Court accepts Magistrate Judge Wall’s Report in its entirety.

I

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The

court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge on a dispositive matter, to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See, Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff'd, 305 Fed. Appx. 815 (2d Cir. Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Wall's Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Wall's Report in its entirety. The branches of defendant's motion seeking dismissal of plaintiff's claims alleging "wrongful termination" and breach of contract are granted and those claims are dismissed with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and defendant's motion is otherwise denied.

SO ORDERED.


SANDRA K. FEUERSTEIN
United States District Judge

Dated: January 10, 2011
Central Islip, New York